IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.03.2007

CORAM:

THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.23142 of 2004

P. Rajeswari Petitioner

vs.

1 The Vice Chancellor
The Tamil Nadu Dr. MGR Medical University
69/40 Anna Salai
Guindy
Chennai - 600 032

2 The Registrar
The Tamil Nadu Dr. MGR Medical Unviversity
69/40 Anna Salai
Guindy
Chennai - 600 032 Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus as stated therein.

For petitioner Mr. N.G.R. Prasad
For M/s. Row and Reddy

For respondents Mr. AR.L. Sundaresan, Sr. Counsel
for Mrs. AL. Gandhimathi

O R D E R

The petitioner seeks a writ of certiorarified mandamus calling for the records relating to the order bearing reference Proc.No.EI (2)452/2000 dated 18.08.2003 issued by the first respondent and to quash the same and to consequently direct the respondents to reinstate her with all attendant benefits including seniority and monetary benefits.

2. The brief facts of the case are as under:

The petitioner is a Computer Science graduate. Based on the advertisement dated 27.08.2000 issued by the respondent University calling for applications for the post of Programmer with the break

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

up of reservation being one post each for OC, SC and BC categories, she applied for the same. By the letter dated 13.11.2000 of the respondent University, the petitioner, who belongs to Scheduled Caste, was appointed as Programmer and she joined duty on 29.11.2000 with time scale of pay fixed at Rs.8000-275-13500. She was granted two increments and Provident Fund contributions were also deducted from her salary. While so, she was terminated from service by an order dated 18.08.2003 passed by the first respondent even without being given an opportunity of hearing. The reason attributed to her termination is that the Telemedicine Project for which she was temporarily appointed was discontinued. The petitioner immediately issued a legal notice to the respondent University referring to the newspaper advertisement, order of appointment fixing her in time scale of pay and also pointed out that out of three employees namely, Poongothai, Shanthi and the petitioner herself, Poongothai has been retained in service and Shanthi and herself have been terminated showing selective discrimination. Since there was no response to the legal notice, the petitioner has come up with the present writ petition.

3. The main grounds of attack in this writ petition are that:

a. the petitioner was not appointed in service against any particular project / scheme according to the Notification dated 28.07.2000 and as such, her services cannot be terminated without any prior notice or hearing as per the provisions of the Tamil Nadu Medical University Act, 1987 (in short "the Act") and without complying with the provisions of Section 25-F of the Industrial Disputes Act.

b. increments had been granted to the petitioner, P.F. deductions had also been made and the other candidate appointed along with her continues to remain in service and this being the case, the petitioner cannot be selectively discriminated.

c. the impugned order is violative of Articles 14 and 21 of the Constitution of India.

4. In the counter, it is contended that the respondent University entered into an agreement in September 2000 with one Medical Centre Boston International, U.S.A. for starting a Telemedicine Project and since the project was not cost-effective and the person in-charge in the U.S.A. also had closed down the project, it was decided by the Governing Council of the University to wind up the project and to terminate the services of the temporary staff appointed for the Telemedicine Project and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

accordingly, the petitioner and another employee by name Shanthi were terminated.

5. Mr. N.G.R. Prasad, learned counsel for the petitioner has vehemently contended that when there was no whisper either in the Notification for appointment or in the appointment order of the petitioner that the appointment is against a particular project, the impugned order terminating the services of the petitioner, that too, without affording an opportunity of personal hearing as per the provisions of the Act, is ex-facie illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India.

6. The counsel for the petitioner has further contended that when the petitioner's salary has been fixed on time-scale of pay and she had been given increments and even Provident Fund deductions have been made from her salary, the impugned action of the respondent University in terminating the petitioner from service is not at all justified.

7. Finally, it is the contention of the counsel for the petitioner that the action of the respondent University in continuing the services of the candidate belonging to OC category appointed along with the petitioner and terminating the petitioner on the ground that the project for which she was appointed is closed, is nothing but an act of selective discrimination.

8. In support of his contention that an opportunity of personal hearing ought to have been given to the petitioner, Mr. Prasad has relied on Section 12(4) of the Act which reads as under:

> "The Vice Chancellor shall have power to take action on any matter concerning the affairs of the University and make take such action as he may deem necessary but shall, as soon as may be, thereafter report the action taken to the officer or authority or body who or which would have ordinarily dealt with the matter
>
> Provided that no such order shall be passed unless the person, likely to be affected, has been given a reasonable opportunity of being heard.

9. To strengthen his contention that the respondent University ought to have followed the provisions of Section 25-F of the Industrial Disputes Act, 1947, Mr. Prasad has relied on a decision of the Supreme Court reported in 2001 (3) LLN 820 in the matter of Deep Chandra vs. State of Uttar Pradesh and another and the relevant portion reads as under: (para 2)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> ". . .The High Court lost sight of the point in issue that is, when an employee had put in service for more than 240 days in each year for several years whether his services can be put to an end to without following the procedure prescribed under Section 25-F of the Industrial Disputes Act. If there has been violation thereof, such an employee will have to be reinstated in his original service on the same terms and conditions in which he was working earlier. . ."

10. Per contra, Mr. AR.L. Sundaresan, learned Senior Counsel appearing for the respondent University has strenuously contended that the newspaper advertisement was given to fill up only two temporary posts of Computer Programmer for the Telemedicine project along with one regular vacancy of Computer Programmer created in 1999 for Computer Examination Centre and since the Telemedicine Project was not feasible and hence, wound up, the action of the respondent University in terminating the services of the petitioner is only in accordance with the appointment order of the petitioner which specifically contains a clause to the effect that her appointment is purely on a temporary basis and she is liable to be discharged from service without any prior notice and even without any reasons therefor.

11. The learned Senior Counsel has further contended that a person appointed against a temporary post can be paid a consolidated pay or be put on time scale of pay with increments and since the petitioner had completed six months of service, Provident Fund contributions were deducted from her salary as per G.P.F. Rules and hence, the mere fixing of time scale of pay for the petitioner and granting her increments and the deduction of Provident Fund contributions from her salary will not amount to offering a permanent post.

12. I have heard the learned counsel on either side and have also gone through the records available before this Court, particularly, the advertisement of the respondent University calling for applications for the post of Computer Programmer, the petitioner's appointment order and the impugned order of termination.

13. The point which is for consideration in this writ petition is whether the respondent University is justified in dismissing the petitioner on the ground that the project for which the petitioner was appointed is closed.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

14. From a plain reading of the newspaper advertisement given by the respondent University on 27.08.2000, it can be seen that nothing has been spelt out to the effect that the appointment is made only for the purpose of Telemedicine Project. In the appointment order dated 13.11.2000 too, there is no mention to the above effect. It is not in dispute that the petitioner has been put on time-scale of pay and given two increments and Provident Fund contributions also were deducted from her salary. It is also not in dispute that before the issuance of the impugned order, the petitioner has not been afforded an opportunity of hearing which is mandated as per Section 12(4) of the Act.

15. Thus, while deciding the issue on hand as to whether the impugned action of the respondent amounts to arbitrariness and selective discrimination, it would be relevant to deal with Articles 14 and 16 of the Constitution of India.

16. Article 14 is the genus while Article 16 is a specie. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetical to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal, both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment, as held by the Supreme Court in the matter of E.P. Royappa vs. State of Tamil Nadu reported in (1974) 4 SCC 3.

17. Law is a social engineering to remove the existing imbalance and to further the progress, serving the needs of the Socialist Democratic India under rule of law. The prevailing social conditions and actualities of life are to be taken into account in adjudging whether the impugned action would subserve the purpose of the society. The arbitrary and unbridled and naked power of wide discretion to dismiss an employee without any guidelines or procedure would tend to defeat the constitutional purpose of equality and allied purposes. Therefore, one would be circumspect, pragmatic and realistic to these actualities of life while angulating constitutional validity of wide, arbitrary, uncanalised and unbridled discretionary power of dismissal vested in an

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

appropriate authority, either by a statute or a statutory rule. Vesting arbitrary power would be a feeding ground for nepotism and insolence. Thus, when the Constitution assures dignity of the individual and the right to livelihood, the exercise of power by the Executive should be cushioned with adequate safeguards for the rights of the employees against any arbitrary and capricious use of those powers. The right to life, a basic human right assured by Article 21 of the Constitution comprehends something more than mere animal existence. i.e. dignity of the individual.

18. The Supreme Court, in its judgment reported in 1991 Supp (1) SCC 600 in the matter of Delhi Transport Corporation vs. D.T.C. Mazdoor Congress and Others has held as follows: (paras 280 and 281)

> ". . .The 'standard form' contract is the rule. He must either accept the terms of this contract in toto, or go without. Since, however, it is not feasible to deprive oneself of such necessary services, the individual is compelled to accept on those terms. In view of this fact, it is quite clear that freedom of contract is now largely an illusion…
>
> ...This Court, as a court of constitutional conscience enjoined and is jealously to project and uphold new values in establishing the egalitarian social order. As a court of constitutional functionary exercising equity jurisdiction, this Court would relieve the weaker parties from unconstitutional contractual obligations, unjust, unfair, oppressive and unconscionable rules or conditions when the citizen is really unable to meet on equal terms with the State. It equally enables the employer to pick and choose an employee at whim or vagary to terminate the service arbitrarily and capriciously. It is to find whether the citizen, when entering into contracts of service, was in distress need or compelling circumstances to enter into contract on dotted lines or whether the citizen was in a position of either to "take it or leave it" and if it finds to be so, this Court would nor shirk to avoid the contract by appropriate declaration. Therefore, though certainty is an important value in normal commercial contract law, it is not an

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

absolute and immutable one but is subject to change in the changing social conditions."

19. On an evaluation of the facts and circumstances of the case, it is seen that the first respondent has power to take any action on any matter concerning the affairs of the University, provided no order is passed unless the person likely to be affected is given a reasonable opportunity of being heard. This mandate under the Act has not been looked into by the first respondent in its proper perspective, while exercising his power to terminate the service of the petitioner and thus, it amounts to violation of principles of natural justice. Also, out of three persons selected for the post of Programmer having followed the due process of recruitment, the respondent University cannot selectively retain one employee and terminate the petitioner and the other employee namely Shanthi for the reason that the project for which they were recruited is closed. A notification for recruitment of three persons has been advertised and accordingly, selection of three persons has been made and therefore, the respondent University cannot pick and choose the petitioner at its whim or vagary to terminate her service arbitrarily and capriciously. This arbitrary action shown by the respondent University is contrary to the established rule of law and on that ground, the impugned order suffers from legal infirmity and hence, the same is unsustainable. As the impugned action of the first respondent is nothing but selective discrimination, it is violative of Articles 14 and 16 of the Constitution of India as the matter is concerned with public employment where fairness and reasonableness in the matter of equality of treatment is all the more necessary. Rather than issuing the impugned order, the respondent University could have waited till a vacancy arises as done in the case of Poongothai and since it is not done, it is clear that the respondent University has not applied the same yardstick to the petitioner and Shanthi which it applied to Poongothai and this is a clear act of selective discrimination. Thus, the respondent University has violated the Constitutional rights guaranteed under Articles 14 and 16 of the Constitution of India.

20. Lastly, it is to be noted that the Supreme Court has, time and again, made it clear that it is to be seen whether, a citizen when entering into contract of service was in distress need or compelling circumstances entered into contract on dotted lines or whether the citizen was in a position of either to "take it or leave it" and if it finds to be so, it would not shirk to avoid the contract by appropriate declaration. In the instant case, the only reason attributed for termination is that the employment is purely temporary and the services of the petitioner can be terminated at any time without assigning any reason therefor. If the above-said ratio of the Supreme Court is applied to the present case, the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

answer to the question as to whether such a condition can be given effect to the petitioner, is no. Thus, the respondent University has violated all the canons of justice in issuing the impugned order with arbitrariness and in violation of the principles of natural justice.

21. In view of the above discussion and considering the fact that it was not made known to the petitioner that she was appointed for a particular project either by way of advertisement or by way of her appointment order, I am of the considered view that the order of the first respondent terminating the services of the petitioner, heavily relying on the clause in the appointment order to the effect that the petitioner may be discharged from service without assigning any reason, is purely unconstitutional and arbitrary in nature for the reason that in the service law jurisprudence, any order of initial appointment will always be for a temporary vacancy. Therefore, whenever a regular vacancy arises, a temporary employee has to be fitted in the regular vacancy. The clause which is relied on by the respondent University is a routine and usual one which can be found in any appointment order and the respondent University cannot take shelter merely by the fact that such a clause has been incorporated in the order under challenge. Thus, it is held that the impugned action of the respondent University is one of sheer arbitrariness and selective discrimination.

22. In the light of what has been stated above, the impugned order dated 18.08.2003 passed by the first respondent is quashed insofar as the petitioner is concerned, and it is directed that the petitioner be reinstated in service within a period of six weeks from the date of receipt of a copy of this order with all attendant benefits including seniority and monetary benefits.

In fine, the writ petition is allowed. No costs.

Sd/-
Asst. Registrar.

WEB COPY

/true copy/

Sub Asst. Registrar.

cad

https://hcservices.ecourts.gov.in/hcservices/

To

1 The Vice Chancellor
The Tamil Nadu Dr. MGR Medical University
69/40 Anna Salai
Guindy, Chennai - 600 032

2 The Registrar
The Tamil Nadu Dr. MGR Medical Unviversity
69/40 Anna Salai
Guindy
Chennai - 600 032

1 cc to Mrs. A.L. Gandhimathi, Advocate, Sr. 17355
2 ccs to M/s. Row and Reddy, Advocate, Sr. 17414, 16838

W.P. No.23142 of 2004

NTK (CO)
kk 30/3

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/